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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1959

No. 213

HELMUT LEGERLOTZ,
*Petitioner*

v.

WILLIAM P. ROGERS, Attorney General of the United States,
*Respondent*

## PETITION FOR WRIT OF CERTIORARI

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*Respondent*

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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*To the Honorable the Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:*

Helmut Legerlotz, petitioner herein, prays that a writ of certiorari be issued to review the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on April 16, 1959 affirming the order of the United States District Court for the District of Columbia granting respondent's motion for summary judgment and dismissing petitioner's complaint.

## OPINION BELOW

The opinion of the United States Court of Appeals for the District of Columbia Circuit, copy of which is appended hereto, is reported at 266 F. 2d 457.

## JURISDICTION

The jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1254.

## QUESTIONS PRESENTED

1. Is Section 12 of the Administrative Procedure Act relating to judicial review of agency action applicable to seizures and returns of property under the Trading with the Enemy Act?

2. Is the taking in 1955 by the Attorney General of property of a non-enemy whose property was ordered returned in 1949 judicially reviewable under the Trading with the Enemy Act?

3. If the seizure is not subject to judicial review, is such taking violative of the just compensation and due process requirements of the Fifth Amendment to the Constitution of the United States?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. Amendment Number Five to the Constitution of the United States.

2. Sections 7 and 9(a) of the Trading with the Enemy Act, enacted October 6, 1917 (Public Law 91; 65th Congress, 40 Stat. 411).

3. Sections 32(a)(2)(C) and 33 of the Trading with the Enemy Act as amended, enacted August 8, 1946 (Public Law 671, 79th Congress, 60 Stat. 925).

4. Sections 10(a) and (e) and 12 of the Administrative Procedure Act, enacted June 11, 1946 (Public Law 404, 79th Congress, 60 Stat. 243).

## STATEMENT OF THE CASE

On September 29, 1943 the Alien Property Custodian, acting under the Trading with the Enemy Act, summarily

seized property owned by the petitioner. Petitioner had been arrested in Paris in October 1941 by the Germans and imprisoned by them during the war for aiding the Allied war effort. After hostilities ended he filed formal claim for the return of his property, and in June 1947 entered the United States as a permanent resident.

On December 22, 1948, respondent published a notice of intention to return petitioner's property to him based on the allowance of petitioner's claim under Section 32 (a)(2)(C) of the Trading with the Enemy Act, providing for return to persons considered non-enemies and persecuted during the war, and on March 3, 1949 respondent published an order returning petitioner's property to him. Of this property the sum of $78,930.45 was not delivered to petitioner, and almost seven years later, on December 22, 1955, respondent published what purported to be an amended return order retaining the sum of $48,317.94 "in the interest of the United States" and reserved an additional sum of $30,612.51 for possible federal income tax liability on the $48,317.94 never received by petitioner.

Petitioner filed action in the United States District Court for the District of Columbia to require payment to him of the property ordered returned but not delivered to him. Respondent filed a motion for dismissal or summary judgment, which the court granted on the ground of lack of jurisdiction. Petitioner appealed to the United States Court of Appeals for the District of Columbia Circuit, which court affirmed the judgment of the lower court.

## REASONS FOR GRANTING THE WRIT

The issues presented by this case raise fundamental questions as to the reviewability of federal agency action, the extent of the federal power of summary seizure of non-enemy property without compensation during peacetime under the war power, the right of a non-enemy